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[*Verdone v. Northeast Utilities*](#), 97-ERA-27 and 30 (ALJ Sept. 3, 1997)
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U.S. Department of Labor
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Dated: September 3, 1997

CASE NO.: 97-ERA-27/30

IN THE MATTER OF:

Gary F. Verdone,
David M. Collins
Complainants

v.

Northeast Utilities
Respondent

**RECOMMENDED DECISION AND ORDER
APPROVING SETTLEMENT AGREEMENTS AND GENERAL RELEASES
AND DISMISSING COMPLAINTS WITH PREJUDICE**

This is a proceeding arising under the Energy Reorganization Act, 42 U.S.C. §5851, and its implementing regulations found at 29 C.F.R. Part 24. The undersigned is in receipt of a Joint Motion for a Recommended Decision and a Final Order Approving Settlement Agreements and Dismissing the Complaints With Prejudice. Attached to that Joint Motion are two Settlement Agreements, one executed by Complainant Verdone and the other executed by Complainant Collins. Both documents were executed on August 14, 1997, *see* para. XV, and are signed by all parties of record.

The Part 24 regulations do not contain any provision relating to a dismissal of a complaint by voluntary settlement. Therefore, it is necessary to refer to the Rules of Practice and Procedure for Administrative Hearings before the Office of Administrative Law Judges, 29 C.F.R. Part 18, which Rules are controlling in the absence of a specific provision at Part 24.

Part 18.9 allows the parties in a proceeding before an administrative law judge

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to reach agreement on their own. 29 C.F.R. Part 18.9(a)-(c). The parties must "[n]otify the administrative law judge that the parties have reached a full settlement and have agreed to dismissal of the action." 29 C.F.R. Part 18.9(c)(2). Once such notification occurs, the administrative law judge shall then issue a decision within thirty (30) days if satisfied with the agreement's form and substance. 29 C.F.R. Part 18.9(d).

This Judge must review the Settlement Agreements to determine whether their terms are a fair, adequate and reasonable settlement of the complaint. **Bonanno v. Stone & Webster Engineering Corp.**, 97-ERA-33 (6/27/97) (Citation Omitted). In the matter **sub judice**, I note that the terms of the settlement agreements encompass the settlement of matters arising under various laws, only one of which is the ERA. For the reasons set forth in **Poulos v. Ambassador Fuel Oil Co., Inc.**, 86-CAA-1, (Sec'y 11/2/87), I have limited my review of the agreements to determining whether their terms are a fair, adequate and reasonable settlement of Complainants' allegation that Respondent violated the ERA.

Upon careful review, this Judge has reached the determination that the Settlement Agreements and General Releases fully comport with precedent established by the Secretary and/or Administrative Review Board.

The parties have included language in the agreements to the effect that Respondent believes it acted lawfully and that nothing in the agreements should be construed as an admission of liability or violation of the ERA. *See* preamble, para. 4; para. 2.3(b); Appendix A, para. 4. This recommended decision and order shall not be construed as indicating my view on the merits of this entire matter.

Paragraph 3.1 of the settlements provides that Complainants shall keep the terms of the settlements confidential. I note, however, the parties' effort to bring this confidentiality provision into compliance with applicable case law, such as **McGlynn v. Pulsair Inc.**, 93-CAA-2 (Sec'y 6/28/93), by specifically providing the confidentiality provision does not restrict disclosure where required by law. *See* paras. 3.1(c), 3.3, 4.1; Appendix A, para. 8.

Paragraph 7.1 provides that the agreements shall be governed in all respects by the laws of the State of Connecticut. I interpret this provision as not limiting the authority of the Secretary or the U.S. District Court under the applicable statute and regulations. *See* **Generally Rondinelli v. Consolidated Edison Co.**, 91-CAA-3 (Sec'y 4/10/92), at p. 2.

In accordance with precedent such as **Biddy v. Pipeline Service Co.**, 95-TSC-7 (12/3/96), the parties have certified that no other settlement agreements were entered into between the parties. *See* para. 10.1.

This Judge notes the parties have designated the Settlement Agreements and General Releases as confidential commercial information, as defined at 29 C.F.R. Part 70.26, and

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thereby attempt to preclude disclosure pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. §552. In this regard, *see* para. 3.4.

FOIA, however, *requires* agencies to disclose requested documents unless they are exempt from disclosure. *See Bonanno, supra*, at p. 2.; **Klock v. Tennessee Valley Auth.**, 95-ERA-20 (ARB 5/30/96), at p. 2; **Darr v. Precise Hard Chrome**, 95-CAA-6 (Sec'y 5/9/95), at p. 2; **Webb v. Consolidated Edison Co.**, 93-CAA-5 (Sec'y 11/3/93) at p. 2. Since no FOIA request has been made, "it would be premature to determine whether any of the exemptions in FOIA would be applicable and whether the Department of Labor would exercise its authority to claim such an exemption and withhold the requested information. It would also be inappropriate to decide such questions in this proceeding." *Darr, supra*, at pp. 2-3. *See Also DeBose v. Carolina Power and Light Co.*, 92-ERA-14 (Sec'y 2/7/94), at p. 3. The appropriate procedure for a FOIA request may be found at 29 C.F.R. Part 70.26. *See Generally Bonanno, supra*, at n. 1.

Accordingly, it is hereby **RECOMMENDED** that the Settlement Agreements and General Releases between Complainants, Gary F. Verdone and David M. Collins, and Respondent, Northeast Utilities, be **APPROVED** and that the matter be **DISMISSED WITH PREJUDICE**. It is **FURTHER RECOMMENDED** that the Settlement Agreements and General Releases be designated as confidential commercial information and be handled in accordance with 29 C.F.R. Part 70.26.

DAVID W. DI NARDI
Administrative Law Judge

Boston, Massachusetts
DWD:jw

NOTICE: This Recommended Decision and Order and the administrative file in this matter will be forwarded for review to the Administrative Review Board, U.S. Department of Labor, Frances Perkins Building, Room S-4309, 200 Constitution Avenue, N.W., Washington D.C. 20210. The Administrative Review Board is the authority vested with the responsibility of rendering a final decision in this matter in accordance with 29 C.F.R. Part 24.6, pursuant to Secretary's Order 2-96, 61 Federal Register 19978 (May 3, 1996).